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Review of the efficiency of the administrative and financial functioning of the United Nations

Activities of the Independent Audit Advisory Committee for the period from 1 January to 31 July 2008

Report of the Independent Audit Advisory Committee

Summary

By its decision 62/413, the General Assembly appointed the following members of the Independent Audit Advisory Committee with effect from January 2008: Vadim Vadimovich Dubinkin (Russian Federation), Vijayendra Nath Kaul (India), John F. S. Muwanga (Uganda), Adrian Patrick Strachan (Jamaica) and David M. Walker (United States of America).

The first session of the Committee, which was held in February 2008, was devoted to organizational matters, including the election of the Chairperson and Vice-Chairperson and the adoption of its rules of procedure. At its second and third sessions, the Committee was fully engaged with its responsibilities in line with its terms of reference. The main activity in the second session was the consideration of the budget for the Office of Internal Oversight Services (OIOS) under the support account for peacekeeping operations for the period from 1 July 2008 to 30 June 2009 (see A/62/814 and Add.1).

The Independent Audit Advisory Committee found the OIOS proposal for a hub and spoke structure for its Investigations Division to have strong conceptual merit, but suggested that it should be implemented in a phased manner to ensure that the transfer of investigators out of the peacekeeping missions to regional hubs will not leave any operational gaps.

* A/63/150 and Corr.1.

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Because of the timing of the sessions, there was no discussion of the Committee's report by the Advisory Committee on Administrative and Budgetary Questions or the Fifth Committee. However, since the recommendations are still relevant for OIOS operations, the Independent Audit Advisory Committee believes that they should remain open for consideration by those two bodies.

Other recommendations for improvements made by the Independent Audit Advisory Committee relate to the OIOS work-planning process to improve the effectiveness of cooperation between OIOS and the other oversight bodies, namely, the Joint Inspection Unit and the Board of Auditors.

The Committee comments on the report of the Secretary-General on the accountability framework, the enterprise risk management and internal control framework and the results-based management framework in the present report. Overall, the Committee supports the implementation of an enterprise risk management and internal control framework. The Committee went further to recommend the establishment of a Chief Risk Officer position reporting to the Secretary-General or Deputy Secretary-General to provide advice and support to senior managers and coordinate risk management strategies at the enterprise level. The Committee suggested that the implementation project should be structured in stages and that the proposed pilot project should be planned as the first phase of a multiphase project.

The Committee has highlighted two issues of significance in the report of the Board of Auditors on the United Nations financial statements, namely, the implications of recognizing end-of-service liabilities on the face of the financial statements and the lack of controls relating to non-expendable property. The Committee also draws attention to the challenges and considerations that need to be taken into account in the implementation of the International Public Sector Accounting Standards.

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I. Introduction

1. The General Assembly, in its resolution 61/275 (annex), requested the Independent Audit Advisory Committee to submit an annual report, which should include a summary of its activities and related advice. Since the Committee has been operational only since 1 January 2008, the members agreed that the first report submitted pursuant to that request would cover the period 1 January to 31 July 2008 in order to provide a report for the consideration of the Assembly at its sixty-third session.

A. Establishment of the Independent Audit Advisory Committee

2. The Independent Audit Advisory Committee was established as a subsidiary body of the General Assembly by its resolution 60/248 to serve in an expert advisory capacity and to assist the Assembly in fulfilling its oversight responsibilities.

3. The members of the Committee were appointed by the General Assembly with due regard for equitable geographic representation, and are independent of their Governments, the Board of Auditors, the Joint Inspection Unit and the Secretariat. They comprise an exceptional group of senior-level experts in the field of financial, audit and/or other oversight-related expertise. The Committee is responsible for advising the Assembly on the scope, results and effectiveness of audit as well as other oversight functions and on measures to ensure management's compliance with audit and other oversight recommendations. The members of the Committee, all of whom were appointed to serve for a three- or four-year term of office, all beginning on 1 January 2008, are: Vadim Vadimovich Dubinkin (Russian Federation), Vijayendra Nath Kaul (India), John F. S. Muwanga (Uganda), Adrian Patrick Strachan (Jamaica) and David M. Walker (United States of America).

4. During its first session, in February 2008, the members elected Mr. Walker and Mr. Kaul as Chairperson and Vice-Chairperson, respectively, for a one-year renewable term starting in 2008. In this same session the Committee initiated the recruitment process, which resulted in the appointment of Uren Pillay as the Executive Secretary of the Committee with effect from 1 June 2008.

B. Terms of reference

5. The terms of reference of the Independent Audit Advisory Committee were adopted by the General Assembly on 29 June 2007 and are included as an annex to its resolution 61/275. The Committee has agreed that in undertaking its functions, it would work strictly within the terms of reference. The terms of reference, which were adopted after extensive deliberations by Member States, will guide the scope and extent of the work of the Committee. The Committee will use its independent professional judgement in determining its priorities and in providing advice to the Assembly.

C. Rules of procedure

6. In paragraph 4 of the terms of reference, the General Assembly indicated that the Independent Audit Advisory Committee may adopt its own rules of procedure, which shall be communicated to the Assembly.

7. At its first session the Committee adopted rules of procedure (see annex) to govern its operations. Those rules supplement the terms of reference and shall be read in a manner consistent with them.

8. The Committee agreed that it may review and amend the rules of procedure from time to time, provided that they remain consistent with the terms of reference.

9. The Committee invites the General Assembly to take note of the rules of procedure.

II. Activities of the Independent Audit Advisory Committee

A. Sessions of the Committee

10. According to paragraph 4 of the terms of reference, the Independent Audit Advisory Committee shall meet up to four times a year, in coordination with the relevant activities of the United Nations and the General Assembly and in accordance with the Assembly's resolutions on the pattern of conferences.

11. From its establishment on 1 January 2008 to the date of submission of the present report, the Committee had held three sessions: from 20 to 22 February, from 29 April to 1 May and from 16 to 18 July. All of the sessions were held at United Nations Headquarters.

12. During those sessions, in addition to adopting its rules of procedure, the Committee established its initial priorities. In addition to the present annual report, the Committee provided comments to the General Assembly, through the Advisory Committee on Administrative and Budgetary Questions, on the budget for the Office of Internal Oversight Services (OIOS) under the support account for peacekeeping operations for the period from 1 July 2008 to 30 June 2009 (A/62/814 and Add.1). The Committee has also begun developing a three-year plan for its work, which it will finalize at its fourth session, to be held in December 2008.

13. The Committee met with a wide range of key stakeholders, including representatives of Member States, the Chairpersons of the Fifth Committee and the Advisory Committee on Administrative and Budgetary Questions, the Secretary-General, the Deputy Secretary-General, various Under-Secretaries-General and senior officials of the United Nations and various other parties.

14. As an advisory committee, the Independent Audit Advisory Committee is cognizant of the fact that its recommendations are to be submitted to the General Assembly for consideration. However, during the course of its work in the three sessions held to date, the Committee found itself in a position whereby advice and suggestions were provided directly to management. While this was well-received by management, the Committee appreciates that there is no obligation to act on that advice. Nevertheless, the Committee decided that any significant advice or suggestions provided to management would henceforth be disclosed to the

Assembly for informational purposes. Where appropriate, management will be invited to keep the Committee informed of any related actions.

B. Overview of future plans

15. In preparing a three-year workplan, the Committee mapped its responsibilities, as set out in its terms of reference, to the likely programme of work of the Advisory Committee on Administrative and Budgetary Questions and the General Assembly (based on previous sessions). The Committee intends to schedule its sessions and activities in such a manner as to ensure that interaction with intergovernmental bodies is coordinated and that its reports are available in a timely manner. In a preliminary review of the workplan, the Committee has identified several key areas which will be the main focus for each of its four annual sessions. The table below provides an indication of the areas of planned focus for each session.

Session	*Focus area*	*Timing of consideration of report by intergovernmental bodies*
February	OIOS proposed budgets: • Peacekeeping support account • Regular budget	Peacekeeping Support account • Advisory Committee on Administrative and Budgetary Questions, winter session • General Assembly, second part of resumed session Regular budget • Advisory Committee on Administrative and Budgetary Questions, spring session • General Assembly, main session
May	Status of implementation of recommendations of oversight bodies Management of risks and internal controls	General Assembly, main session
July	Operational implications of issues and trends in the financial statements Cooperation among United Nations oversight bodies Preparation of annual report	
December	Risk assessment results Examination of OIOS workplans for the next year	

16. One of the responsibilities of the Committee as articulated in its terms of reference is to advise the General Assembly on the effectiveness, efficiency and impact of OIOS oversight functions. The Committee's approach to this will involve

soliciting inputs from multiple sources, including the subjects of OIOS oversight activities. To that end, the Committee has decided to use a confidential survey questionnaire that will be administered by the Committee's secretariat. The questionnaire will serve to gather information from staff and management on the professionalism of OIOS and its approach to oversight engagements; issues of process such as conduct and quality of entry and exit conferences, how issues of concern are dealt with, due process considerations and how any disagreements are resolved.

17. The Committee also finds it opportune to highlight that in its resolution 59/272, the General Assembly decided to evaluate and review at its sixty-fourth session the functions and reporting procedures of the Office of Internal Oversight Services. **It is timely, therefore, for the Assembly to consider the role it would like the Committee to play in this mandated review.**

18. In the discussion on planning for the future, the Committee identified the following events that are scheduled to take place in 2010 and that will have an impact on its work activities:

(a) Review of the terms of reference of the Committee at the sixty-fifth session of the General Assembly, as mandated in resolution 61/275;

(b) The end of the term of the three members whose three-year appointment expires in December 2010;

(c) The end of the five-year term of the Under-Secretary-General for Internal Oversight Services in July 2010.

19. As regards the General Assembly review of the terms of reference, the Committee may make proposals for changes in its current terms of reference on the basis of its operational experience over the preceding three years.

20. The Under-Secretary-General for Internal Oversight Services is a key position in the United Nations governance and oversight mechanism, and it is critical for the Organization that he or she possess the appropriate technical qualifications. **The Committee stands ready to provide any assistance the General Assembly may require in the appointment of an Under-Secretary-General for Internal Oversight Services.**

21. Focusing on the operations of the Committee itself, the secretariat has commenced development of a dedicated website that will serve as a medium for sharing information with the United Nations staff and management and with the general public on the role and function of the Committee in the United Nations. The website will be presented to the members of the Committee for their approval at the fourth session, to be held in December. Once approved, the website will be launched, initially in English, with subsequent updates as each of the remaining five languages is completed.

III. Detailed comments

A. Coordination and cooperation among United Nations oversight bodies

22. Cooperation and coordination among the oversight bodies was discussed with three United Nations oversight bodies: the Joint Inspection Unit, the Board of Auditors and OIOS.

23. The oversight bodies meet regularly (the Joint Inspection Unit, the Board of Auditors and OIOS hold annual tripartite coordination meetings, and OIOS and the Board of Auditors meet bimonthly). Discussion of their workplans is a standard item on the agenda at those meetings. All three oversight bodies agreed that cooperation among them was good, especially with respect to the sharing of reports and assignment-related information, as well as the sharing of training materials and technology. The Committee, however, recognized that the coordination of OIOS with the Joint Inspection Unit and the Board of Auditors at the planning stage could be improved to minimize duplication. Currently, OIOS workplans are finalized without the involvement of either of the two bodies. The final workplans are then shared with the oversight bodies, and any duplication of work that is identified is resolved quarterly. **The Independent Audit Advisory Committee recommends that OIOS meet with the Joint Inspection Unit and the Board of Auditors in an annual joint planning session before finalizing the OIOS workplans in order to ensure that the workplans of the Joint Inspection Unit and the Board of Auditors are taken into account.**

24. **The Committee also recommends that OIOS discuss annual plans for conducting joint or coordinated assignments with the Joint Inspection Unit.**

B. Status of recommendations of United Nations oversight bodies

25. The Independent Audit Advisory Committee followed up with management on efforts to implement the recommendations of the United Nations oversight bodies. The Department of Management reported to the Committee on the mechanisms that are in place to monitor the implementation of recommendations and to ensure that programme managers take responsibility for and are accountable for action in that regard.

26. The implementation of oversight recommendations is a performance indicator in the compact between the Secretary-General and his senior managers. The Management Performance Board reviews the performance of senior managers through the compact.

27. The Management Committee, under the chairmanship of the Deputy Secretary-General, monitors the implementation of: (a) recommendations that OIOS deems to be of the greatest concern; (b) the main recommendations of the Board of Auditors that have been outstanding for more than two years; and (c) all critical recommendations of OIOS that are more than three years old that have not yet been fully implemented.

28. The Committee has taken note of management's efforts to establish a monitoring and accountability mechanism and will continue to follow up with

management to observe the effectiveness of the mechanisms and the action that is taken in cases where the programme manager's performance targets have not been met.

29. The Committee agrees with the Department of Management that the implementation of a risk management framework and the establishment of risk tolerance levels will assist managers in prioritizing the implementation of recommendations.

C. Workplans and budget for the Office of Internal Oversight Services for 2008

30. The responsibilities of the Independent Audit Advisory Committee with respect to internal oversight are contained in paragraphs 2 (c) to (e) of the terms of reference.

31. Paragraph 2 (d) calls for the Committee to review the OIOS budget proposals taking into account its workplan and to make recommendations to the Assembly through the Advisory Committee on Administrative and Budgetary Questions.

32. The Committee set out its observations and recommendations with regard to the OIOS budget in its report on the budget for the Office of Internal Oversight Services under the support account for peacekeeping operations for the period from 1 July 2008 to 30 June 2009 (A/62/814 and Add.1).

33. In the above-mentioned reports, the Committee took note of the OIOS proposal for the restructuring of its Investigations Division and reported that while the hub concept had strong conceptual merit, it believed that more information should have been provided by OIOS on the cost implications of the proposed restructuring. OIOS should have included a cost-benefit analysis showing all relevant costs relating to the current resident investigator approach as compared with the regional hub approach. The OIOS proposal should also include implications for the provision of investigative services to peacekeeping missions in the short and long terms. In this regard, the Committee recommended that some resources be provided in the budget to meet short-term needs of the missions.

34. The Committee therefore recommended that OIOS consider a phased approach to the transfer and/or conversion of posts proposed for 2008/09. The recommendation also called for OIOS to pay close attention to defining the types of skills and experience needed for effective investigators. In considering appointments that may arise as a result of the restructuring, OIOS should take into account the eligibility of current staff members to apply and be considered for the new positions. The process to be employed should be well considered and effectively implemented in order to ensure fairness and equity for all existing United Nations personnel and prospective applicants.

35. The timing of the Advisory Committee on Administrative and Budgetary Questions and the Independent Audit Advisory Committee sessions did not provide an opportunity for engagement and full consideration of the report on the proposed budget for OIOS under the support account for peacekeeping operations for 2008/09. In its report (A/62/855, para. 151), the Advisory Committee on Administrative and Budgetary Questions acknowledged the need for better coordination of both Committees' schedules in order to ensure that the Independent

Audit Advisory Committee's reports are given full consideration. The Chairperson of the Independent Audit Advisory Committee has subsequently met with the Chairperson of the Advisory Committee on Administrative and Budgetary Questions to help ensure that future interactions are coordinated, particularly with regard to the OIOS budget.

36. The Committee therefore believes that the related observations and recommendations contained in its reports (A/62/814 and Add.1) are still relevant for consideration by the General Assembly.

37. In accordance with paragraph 2 (c) of the terms of reference, the Committee should examine the workplans of OIOS and take into account the workplans of the other oversight entities with a view to advising the General Assembly thereon.

38. OIOS briefed the Committee on its workplans and the work-planning process. The Committee also discussed OIOS coordination and cooperation with the Joint Inspection Unit and the Board of Auditors.

39. The Committee noted that there is regular interaction between the oversight bodies with respect to the sharing of workplans. However, the Committee's concern is that no evidence was provided to show that the plans of the Joint Inspection Unit and the Board of Auditors were taken into account in formulating the OIOS workplans. **The Committee recommends that for its future workplans, OIOS continue to coordinate its work with the Joint Inspection Unit and the Board of Auditors to avoid overlap and duplication at the formulation stage of the workplan and show evidence of this in its planning documentation.**

40. The Committee also noted that the OIOS Investigations Division did not prepare a workplan for 2008. **While recognizing that some divisions of OIOS may have more control over their work than others, the Committee recommended that all divisions of OIOS, including the Investigations Division, prepare annual workplans, since they should be used as the basis for requesting resources.**

41. In accordance with the terms of reference, the Committee's review of the OIOS budget proposals need to take in account the OIOS workplans as a basis for the resources requested. **The Committee noted that the OIOS budget for the support account for peacekeeping operations for 2008/09 was prepared before the workplans for 2008 were finalized and recommended that in future the workplans be finalized prior to the preparation of the budget.**

42. **Nevertheless, the Committee recognized the extensive work undertaken by OIOS to develop its workplan using a risk-based approach and suggested that OIOS consider highlighting risks in a high-risk list to give visibility to programmes. OIOS should publish the high-risk list and issue an updated list at least every two years. Information on the related challenges and the progress made by departments and offices should also be noted.**

43. The role of the biennial programme plan for OIOS in setting the strategic direction for the Office was also noted. Therefore, in its future review of the OIOS budget proposals the Committee will also examine the approved OIOS biennial programme plan to ensure alignment of the strategic plans and workplans with the proposed budgets.

D. Risk management and internal control framework

44. Paragraphs 2 (f) and (g) of the terms of reference specifically mandate that the Independent Audit Advisory Committee advise the Assembly on the quality and overall effectiveness of risk management procedures and advise the Assembly on deficiencies in the internal control framework of the United Nations.

45. The report of the Secretary-General on the Secretariat's accountability framework, enterprise risk management and internal control framework, and results-based management framework (A/62/701 and Corr.1 and Add.1) is the most recent development in the Organization in the areas of risk management and the internal control framework. The report was submitted pursuant to General Assembly resolution 61/245, in which the Secretary-General was requested to submit reports on:

(a) The enterprise risk management and internal control framework;

(b) The results-based management framework;

(c) The accountability framework.

46. During deliberations on this subject, the Committee met with representatives of the Department of Management and other related parties.

47. In accordance with its terms of reference, the Committee decided that its comments to the General Assembly on the Secretariat's proposed comprehensive accountability architecture (see A/62/701 and Corr.1 and Add.1) would focus on the enterprise risk management and internal control framework. The Committee's related comments are set out below.

48. Risk management and internal controls are fundamental elements of best practice in the governance of organizations. **The Committee supports the implementation of an enterprise risk management and internal control framework as a step in the right direction.**

49. In deliberating on the Organization's approach to the implementation of an enterprise risk management and internal control framework, the Committee believes that consideration should be given to the fact that such implementation would mean a change in the organizational culture and more than simply an implementation of technical concepts. The Organization should therefore take into consideration basic change management principles. The success and speed of implementation is dependent on clear unwavering support from management at the highest level in the Organization, as well as clear, simple and sufficient communication to United Nations staff on what the concepts mean, what is required of staff members and what benefits this change can bring to their work and how it will foster the achievement of results.

50. The United Nations, possibly more than any other organization in the world, operates in some of the most inherently high-risk areas. However, given its mandates, the Secretariat's successful delivery of results depends on proper management and execution of programmes with limited resources. Effective management must therefore take into consideration those events (risks) that may have an impact on a programme's ability to deliver. This, in the simplest terms, is risk management.

51. The advantages of implementing enterprise risk management (including an internal control framework) are that it:

(a) Clarifies senior management's ultimate responsibility and accountability for risk management and for ensuring that internal controls are adequate. This drives management to be proactive rather than complacent or non-reactive to risks. At the same time, all United Nations personnel have a role to play in helping to implement an effective risk management approach as well as other forms of internal control;

(b) Standardizes risk management principles and definitions and provides an integrated view of risk across the Organization;

(c) Provides assurance to the General Assembly that the risks facing the Organization are identified and being managed;

(d) Improves the Organization's ability to prevent, detect and mitigate risks;

(e) Provides a better basis for managing limited funding and allocating resources to priority areas;

(f) Minimizes duplication of effort and the cost of managing risks by sharing risk information and risk management strategies among departments and offices in the Secretariat.

52. The Organization should make the definition of risk and the related concepts an opportunity for education, communication and raising awareness. Failure to adequately demonstrate how enterprise risk management and an internal control framework can add value to the Organization can be an obstacle to fully integrating the framework within the Organization. **The Committee believes that there is a need for an executive-level document that describes in clear terms for senior management what the benefits are to adopting enterprise risk management and an internal control framework. The Committee also recommends that the Organization's implementation plan include a structured training programme and a communication strategy targeting all staff.**

53. The Committee agrees with the Secretary-General's comments on the role of OIOS in this context (A/62/701, para. 53). The Committee considers, however, that for reasons of independence, OIOS should have the ability to conduct its own risk assessment for purposes of work planning, which should be done giving full consideration to management's assessment. In those cases where OIOS decides not to rely on management's risk assessment, then OIOS should advise management on the reasons for that decision.

54. The implementation of the Secretary-General's full "accountability architecture" needs to reflect the time that it will take to complete and the full cost implications. Such implementation should be managed as organization-wide projects that have dedicated project management resources, timelines, agreed deliverables, defined roles and responsibilities, identified key dependencies, agreed project performance measures and monitoring mechanisms. For the United Nations, the project milestones should be linked to the priorities and speed that are suitable for the Organization. **The Committee recommends that project oversight be assigned to a high-level committee, such as the existing Management Committee, in order to demonstrate senior management's commitment to its implementation.**

55. The Secretary-General's proposal to launch enterprise risk management in a few organizational units as an initial step is a sound approach. **However, the Independent Audit Advisory Committee advises that instead of implementing this as a pilot project, which implies that its feasibility is still being assessed, the Secretary-General should propose implementing enterprise risk management in a few selected organizational units as the first phase of a multi-phase project. In addition, as stated above, the Secretary-General should develop a detailed project plan that provides a reasonable time frame for completing all the phases of the project and that clearly identifies expected outputs, results and the full cost of implementation. A project plan should also include specific steps for monitoring and evaluating how the United Nations is implementing the standard framework for each phase of the project. The phased approach should identify in advance the organizational units that are willing to "champion the cause". These early-adopting organizational units are critical to moving the project forward by demonstrating the positive results that can be achieved, and should therefore be chosen carefully.**

56. The Committee believes that there is a vital need for a risk expert to assist and advise senior management on the technical aspects of enterprise risk management. Organizations typically employ a Chief Risk Officer, whose responsibilities include serving as a coordinator for the distinct risk management activities of departments and offices, acting as a technical resource and adviser, consolidating risk information to advise senior management on the totality of risks and serving as a strategic planner in the development of a comprehensive, integrated risk management plan. The Chief Risk Officer most frequently reports to the highest level in an organization.

57. In this respect, the indication by the Secretary-General that a Chief Risk Officer position is required (A/62/701) is in line with best practice. However, it is not clear from the report whether he indeed proposed to establish that function. **The Committee recommends that the United Nations establish a Chief Risk Officer position, which should report to the Secretary-General or the Deputy Secretary-General.**

58. **In the light of the above recommendation, the Secretary-General's proposal for the establishment of a new Division for Accountability and Results Management should be revisited with respect to its responsibilities for risk management. The Division's responsibilities for risk management as proposed by the Secretary-General would overlap with that of a Chief Risk Officer.**

59. In line with its terms of reference, the Committee will continue its focus on the implementation of enterprise risk management and the internal control framework and to advise the General Assembly accordingly.

E. Issues and trends in the financial statements and in the reports of the Board of Auditors

60. Under paragraph 2 (h) of the terms of reference, the Independent Audit Advisory Committee is required to advise the General Assembly on the operational implications for the United Nations of the issues and trends apparent in the financial statements of the Organization and the reports of the Board of Auditors.

61. As a point of reference for its comments in the present report, the Committee used the concise summary of principal findings and conclusions contained in the reports prepared by the Board of Auditors for the General Assembly at its sixty-third session (A/63/169).

62. The Committee decided to comment on two of the items raised in the Board of Auditors report that it believes to be significant: the recognition of end-of-service liabilities in the financial statements and deficiencies in the recording of non-expendable property.

63. There are two distinct aspects of end-of-service liabilities: the accounting treatment and the funding of the related liability.

64. Under General Assembly resolutions 60/255 and 61/264, the United Nations is required to disclose end-of-service and post-retirement liabilities on the face of its financial statements. Excluding peacekeeping operations, this would entail an adjustment of $1.96 billion to the reserves and funds balances, since no specific funding had been allocated by the Assembly.

65. The Organization's total liabilities (excluding peacekeeping operations) increased fourfold since the last biennium, rising from $0.97 billion to $3.88 billion owing to the recording of liabilities of $2.33 billion for after-service health insurance and other end-of-service liabilities.

66. The Secretary-General has presented five options for funding end-of-service liabilities (see A/61/730), namely:

(a) A one-time assessment on Member States to fully fund the total accrued end-of-service liability;

(b) Successive assessments on Member States over a set period of time at the end of which the end-of-service liability would be fully funded;

(c) Application of a charge against salary costs for all budget types to achieve full funding within a specified period of time (12-13 bienniums);

(d) Combination of current funding under the regular budget and partial funding under the budget of the support account for peacekeeping operations for annual costs related to retirees ("pay as you go"), with a charge against salary costs for all budget types;

(e) A combination of a one-time assessment, successive assessments, transfers from reserves and charges against salary costs.

67. With respect to the accounting treatment, the Committee notes that the majority of the entities under the United Nations umbrella are in compliance with the General Assembly resolution as well as with the International Public Sector Accounting Standards (IPSAS) regarding the recording of liabilities. As a result of the disclosure, the International Trade Centre UNCTAD/WTO, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have reported deficits in their reserves and fund balances. Also, some entities in the United Nations system that fall outside the remit of the Committee have not treated the reporting of end-of-service liabilities consistently.

68. **On the issue of the funding of end-of-service liabilities, the Committee believes that a decision should be taken by the General Assembly before the**

finalization of the next budget to determine whether, how and to what extent the liabilities will be funded in order to smooth out future ongoing assessments on Member States.

69. The deficiencies in United Nations recording of non-expendable property as reported by the Board of Auditors are of concern to the Committee. According to the Board, items could no longer be located or accounted for, there were inconsistencies in the valuation of items, items were not included in the inventory report and there was a lack of physical counts and property records. The Committee views these deficiencies as a serious breakdown in the basic internal controls that are critical for safeguarding the Organization's assets.

70. **The Committee recommends that the General Assembly request the Secretary-General to give priority to addressing the deficiencies pointed out by the Board of Auditors.**

F. Adoption of the International Public Sector Accounting Standards

71. The Independent Audit Advisory Committee addressed the adoption and implementation of IPSAS with representatives from the Department of Management.

72. Since the current information system, the Integrated Management Information System, does not support IPSAS, the implementation of the new enterprise resource planning application becomes a key dependency for the IPSAS project. The Committee agrees with the observation by the Board of Auditors that the delays in the enterprise resource planning project make it unlikely that IPSAS will be implemented by the target date of 2010.

73. In addition to being dependent on the enterprise resource planning project, there are several challenges in the implementation of IPSAS that management is aware of. The Committee highlights the following challenges arising from IPSAS implementation that require the attention of the General Assembly:

(a) Financial statements would have to be prepared and presented at least annually, which has implications for the external auditors;

(b) The Financial Regulations and Rules of the United Nations would have to be updated;

(c) The annual financial statements would have to include a comparison of actual amounts with amounts in the budget, which would use the same basis of accounting as adopted for the budget (i.e. modified accrual basis in the United Nations), even if that basis were different from the basis adopted for the financial statements (which would be the accrual basis after the implementation of IPSAS).

G. Cooperation and access

74. The Independent Audit Advisory Committee is pleased to report that it has received full cooperation from the Joint Inspection Unit, the Board of Auditors, the Office of Internal Oversight Services and senior management in the Secretariat, including the Department of Management. The Committee was also given

appropriate access to the documents, information and external parties it needed to undertake its work in the three sessions held to date.

75. The Committee looks forward to interacting with the intergovernmental bodies and to fulfilling its role as an advisory body.

(*Signed*) David M. **Walker**
Chairperson, Independent Audit Advisory Committees

Vijayendra N. **Kaul**
Vice-Chairperson, Independent Audit Advisory Committee

Vadim V. **Dubinkin**
Member, Independent Audit Advisory Committee

John F. S. **Muwanga**
Member, Independent Audit Advisory Committee

Adrian P. **Strachan**
Member, Independent Audit Advisory Committee

Annex

Rules of procedure of the Independent Audit Advisory Committee

Adopted on 22 February 2008

I. Background

1. The rules of procedure are adopted by the Independent Audit Advisory Committee, hereinafter referred to as "the Committee". The rules supplement the terms of reference of the Committee and shall always be read together with and construed in a manner consistent with the terms of reference.

II. Appointment and representation

2. In accordance with section II, paragraphs 10, 11 and 13 of the annex to General Assembly resolution 61/275, the members of the Committee shall be nominated by Member States and shall be appointed by the Assembly with due regard being paid to equitable geographic representation. All members of the Committee shall reflect the highest level of integrity and shall serve in their personal capacity, and in performing their duties they shall not seek or receive instructions from any Government. All members of the Committee must have recent and relevant senior-level financial, audit and/or oversight experience.

3. The Committee members, selected in accordance with section II of the terms of reference, shall serve an initial term of three or four years and can be reappointed for a second and final term of three years. The members cannot delegate their duties and cannot be represented by any other person in the sessions of the Committee.

4. The Committee shall elect a Chairperson and one Vice-Chairperson for a one-year renewable term commencing on 1 January of each year. Before the term ends, the members shall elect a Chairperson and Vice-Chairperson for the next term.

5. The chairpersonship shall be automatically declared vacant if the Chairperson no longer holds membership in the Committee. The chairpersonship may be declared vacant if the incumbent is disabled or is otherwise unable to discharge his/her responsibilities for the balance of his/her term.

6. In case of a vacancy in the office of the Chairperson, the Vice-Chairperson shall assume the office of Chairperson until the expiration of his/her predecessor's term of office. Members of the Committee shall appoint an acting Vice-Chairperson from among the other members of the Committee.

7. In the event that the Vice-Chairperson ceases to hold membership in the Committee, the members of the Committee shall appoint another Vice-Chairperson from among the other members of the Committee. The vice-chairpersonship may be declared vacant if the incumbent is disabled or otherwise unable to discharge his/her responsibilities for the balance of the term.

8. Under the authority of the Committee, the Chairperson shall represent the Committee, shall attend hearings to respond to questions on the activities and

findings of the Committee and shall serve as the chief spokesperson of the Committee before the press or other key stakeholders based on input received from the Committee. In the absence of the Chairperson, the Vice-Chairperson shall act on behalf of the Chairperson.

III. Role and responsibilities

9. The Independent Audit Advisory Committee, as a subsidiary body of the General Assembly, serves in an expert advisory capacity and assists the Assembly in fulfilling its oversight responsibilities.

10. The responsibilities of the Committee are to provide independent advice to the General Assembly on the scope, results and effectiveness of audits as well as other oversight functions, especially those of the Office of Internal Oversight Services, on measures to ensure the compliance of management with audit and other oversight recommendations and on various risk management, internal control, operational, accounting and disclosure issues.

IV. Plan of activities

11. The organization of activities of the Committee shall be carried out on the basis of an annual workplan to be adopted at a formal session of the Committee.

12. The plan of activities of the Committee may include any of the following:

(a) Advising the General Assembly on the scope, results and effectiveness of audits as well as other oversight functions;

(b) Advising the Assembly on measures to ensure the compliance of management with audits and other oversight recommendations;

(c) Examining the workplan of the Office of Internal Oversight Services, taking into account the workplans of the other oversight bodies, with the Under-Secretary-General for Internal Oversight Services and advising the Assembly thereon;

(d) Reviewing the budget proposal of the Office of Internal Oversight Services, taking into account its workplan, and making recommendations to the Assembly through the Advisory Committee on Administrative and Budgetary Questions thereon; the formal report of the Independent Audit Advisory Committee should be made available to the Assembly and to the Advisory Committee on Administrative and Budgetary Questions prior to their consideration of the budget;

(e) Advising the Assembly on the effectiveness, efficiency and impact of audit activities and other oversight functions of the Office of Internal Oversight Services;

(f) Advising the Assembly on the quality and overall effectiveness of risk management procedures;

(g) Advising the Assembly on deficiencies in the internal control framework of the United Nations;

(h) Advising the Assembly on the operational implications for the United Nations of the issues and trends apparent in the financial statements of the Organization and the reports of the Board of Auditors;

(i) Advising the Assembly on the appropriateness of accounting policies and disclosure practices and assessing changes and risks in those policies;

(j) Advising the Assembly on steps to increase and facilitate cooperation among United Nations oversight bodies;

(k) Advising on any other items requested by the General Assembly.

V. Sessions

13. The Committee shall convene up to four times a year, in coordination with the relevant activities of the United Nations and the General Assembly and in accordance with Assembly resolutions on the pattern of conferences.

14. The Committee may convene at such times and in such locations as may be necessary for the performance of its duties at the call of the Chairperson or at the request of any member of the Committee and as agreed to by the full Committee. Sessions of the Committee shall generally be held at least quarterly, with due adherence to the maximum number of sessions each year as provided for in paragraph 4 of the terms of reference. The dates for sessions of the Committee are to be established by the Chairperson in consultation with the members.

15. The members of the Committee shall normally receive the provisional agenda and accompanying documents for the session in question at least 21 calendar days before the session is held.

16. The Committee shall normally hold closed sessions. The Committee may invite to its sessions individuals or parties it deems appropriate, including representatives of the United Nation Secretariat and representatives of the Board of Auditors, the Joint Inspection Unit and the Office of Internal Oversight Services.

17. Any three members of the Committee shall constitute a quorum.

18. The Executive Secretary shall prepare the draft report of the sessions of the Committee and shall submit it for the review and approval of all Committee members.

VI. Information and decisions

19. The Executive Secretary shall bring to the attention of the members of the Committee any information, communications or reports relevant to the Committee's responsibilities.

20. The Committee shall make every effort to arrive at its recommendations and advice by consensus. However, in the event that one of the members does not agree, then such member shall have the right to briefly state his/her view in any related publication of the Committee. However, such a minority view is not binding on the Committee. A member unable to attend a session of the Committee may make

his/her views on the matters to the Chairperson or Vice-Chairperson to be considered in writing, or by way of telephone or videoconference.

VII. Duties of the officers

21. The Chairperson shall:

(a) Convene the sessions in accordance with article V of these rules;

(b) Present the provisional agenda for the session;

(c) Conduct the meetings of the session;

(d) Issue such correspondence on behalf of the Committee as may be required;

(e) Represent the Committee before such bodies, committees and the like as may be required;

(f) Submit an annual report to the General Assembly on behalf of the Committee;

(g) Serve as the chief spokesperson of the Committee.

22. The Vice-Chairperson shall:

(a) Conduct the meetings during periods of absence of the Chairperson;

(b) Represent the Committee before such bodies, committees and the like as the Chairperson may request;

(c) Assume the functions of the Chairperson in the event the Chairperson ceases to be a member of the Committee.

VIII. Agenda

23. The Chairperson shall direct the preparation of the provisional agenda for each session after consulting with the other members of the Committee.

24. Notwithstanding the general requirement that members receive at least 21 calendar days' notice of the provisional agenda for each session, additional items shall be included on the provisional agenda of a session of the Committee if a member requests the Chairperson to do so at least five days before the date set for the session.

25. An item may be deleted from or added to the provisional agenda of a meeting during the meeting with the unanimous approval of the members.

26. At the beginning of each session, the Committee shall adopt the agenda for its session, which shall include approval of the minutes of the prior session.

IX. Secretary of the Committee

27. The full-time Executive-Secretary of the Committee, provided by the Department of Management in the United Nations Secretariat shall:

(a) Maintain the minutes and other official records of the Committee, which shall remain in his/her office at United Nations Headquarters;

(b) Assist the Chairperson in the preparation of the agenda, other correspondence and technical papers for discussion during the session;

(c) Conduct research and in-depth analysis of the key issues most relevant to the work of the Committee;

(d) Write reports and present information based on the research and analysis conducted;

(e) Prepare the drafts of the minutes of the session and circulate them to all members for approval at the next meeting of the Committee;

(f) Distribute the final minutes of the session;

(g) Keep the Committee informed of developments in the United Nations, which may include such items as policy decisions, decisions of intergovernmental bodies, discussions by expert bodies and the like that relate to the work of the Committee;

(h) Promptly provide members with any information or documents needed to allow them to make complete and accurate reports on the Committee's work to the General Assembly;

(i) Prepare briefing notes for the Chairperson of the Committee;

(j) Draft the Committee's annual report to the General Assembly containing the advice of the Committee to the Assembly and describing its work in discharging its responsibilities, and submit the draft report for review and approval of all Committee members;

(k) Maintain liaison with management, with key personnel of entities that audit the United Nations Secretariat and with the secretariats of the Advisory Committee on Administrative and Budgetary Questions, the Fifth Committee of the General Assembly, the Joint Inspection Unit and the Committee for Programme and Coordination;

(l) Take the steps necessary to ensure that the physical arrangements such as conference rooms, interpretation services and the like are available;

(m) Ensure the effective management of the Committee Secretariat office including maintaining a reference library of documentation on audit/oversight-related administrative and budgetary matters;

(n) Ensure that the Secretariat makes timely travel arrangements for the travel of Committee members and for timely reimbursements relating thereto;

(o) Perform such other duties and responsibilities as may be assigned by the Chairperson in consultation with other members of the Committee.

X. Official correspondence of the Committee

28. Each member will promptly circulate among members of the Committee any communications related to the functions of the Committee that he/she either receives or originates.

29. If a decision of the Committee is required between sessions and in the opinion of the Chairperson a special session is not required but the consent of the members is needed, the Chairperson may solicit the views of the members by direct communication and give effect to the opinion as a Committee decision.

30. The Committee shall determine the manner and form of its formal communications to the General Assembly, the Secretary-General and other parties. Such communications shall be subject to the requirements prescribed by the terms of reference and in accordance with the General Assembly rules and guidelines on documentation. To the extent possible and appropriate, the Committee shall take responsible and practical steps to informally communicate its findings and conclusions to any directly affected parties prior to the publication of any formal communication of the Committee.

XI. Disclosure

31. The Committee secretariat, observers and any third party invited by the Committee to attend its sessions shall not make any document or information public without the Committee's prior authorization.

32. Any Committee member reporting on the Committee's work shall ensure that confidential materials are secured and shall keep other members adequately informed.

XII. Miscellaneous

33. The Committee may amend these rules of procedure, consistent with the terms of reference.

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Report on the activities of the Office of Internal Oversight Services

Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008

Summary

The Procurement Task Force of the Office of Internal Oversight Services (OIOS) addresses cases of procurement fraud and corruption in the United Nations, including at Headquarters, in the various peacekeeping missions and at offices overseas. The Task Force has been responsible since its creation for examining all procurement cases in OIOS. This effort has been handled by a team of 10 to 18 investigators, as well as a Chairman and two support staff. The report of OIOS on the activities of the Task Force in its first 18-month period, ended 30 June 2007, is contained in document A/62/272.

Since its inception in 2006, the Task Force has been assigned an extraordinary caseload of 437 cases, completing 222 investigations and issuing 29 significant reports with an average length in excess of 80 pages with extensive footnotes and evidentiary detail, and more than 100 additional shorter investigation reports issued in summary form. These results were achieved despite the temporary, short-term nature of its mandate, which in turn caused a fairly rapid staff turnover. The disruption was most severe at the end of 2007 following the extremely late decision on the funding for the Task Force for 2008, which in turn resulted in the departure of investigators and interference with ongoing operations.

During the reporting period, the Task Force has reported on five significant fraud or corruption schemes in cases with an aggregate contract value in excess of $20 million.[1] As a result of the Task Force's work, a total of 22 vendors have been sanctioned by the Administration in the reporting period. Since its formation, the Task Force has identified more than 20 significant fraud and corruption schemes in cases with an aggregate contract value in excess of $630 million.

* A/63/150 and Corr.1.

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The Task Force has continued to focus on allegations of corruption and fraud in procurement in the peacekeeping missions and overseas offices, as well as cases at Headquarters. Investigations have identified improprieties, corruption and malfeasance in the General Assembly-mandated review of the pay and benefits system; a steered contract for air charter services in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), a scheme to steer multiple contracts to preferred vendors in offices in the United Nations Office for Project Services (UNOPS) Nairobi; the improper use of consultants in the Department of Economic and Social Affairs and significant cases in UNOPS Afghanistan and the Economic Commission for Africa, which are currently ongoing.

After the completion of investigations, a number of cases have been recommended for referral to national authorities for criminal prosecution, or for consideration of subsequent legal action. The Task Force has also recommended that the Organization seek civil recovery of monetary damages in a number of cases.

The Task Force's focus on serious issues has meant concentration on cases involving allegations of vendor misconduct, including corruption in United Nations contracts, bid rigging, favouritism and collusion. The Task Force has conducted numerous investigations of vendors and OIOS has as a consequence made recommendations to the Organization on these matters, as summarized at the end of the report and in the previous report (A/62/272). These matters have involved investigations of vendors doing business at Headquarters and a number of peacekeeping missions, overseas offices and agencies, including MONUC, UNOPS (Nairobi), the United Nations Offices at Nairobi and Geneva, the United Nations Stabilization Mission in Haiti, the United Nations Integrated Office in Burundi, the International Criminal Tribunal for Rwanda, the United Nations Mission in the Sudan and the United Nations Mission in Liberia.

Through its investigations, the Task Force has also assisted the Vendor Review Committee, the Procurement Division, the Headquarters Committee on Contracts and the Controller in numerous vendor cases and issues. The majority of the subjects of the Task Force's investigations — including staff members and vendors — were based in North America and Europe.

Further, in 2008, on the basis of the Task Force's experience in the cases it had investigated, along with its analysis of comparative international investigative bodies, OIOS formally made recommendations and proposed amendments to the system of vendor sanction, rehabilitation and reinstatement.

The Task Force is funded only until 31 December 2008. It is clearly not possible to complete the Task Force's caseload and its ongoing investigations by the end of the calendar year. More than 150 cases will certainly remain, including a number of fraud and corruption matters. Further, the Task Force will not be able to reach and examine procurement cases and allegations in all of the overseas offices and peacekeeping missions within this time frame, and several significant matters will remain in these locations as well as at Headquarters. It is expected that additional cases will continue to be referred, and there certainly will be a need to

address these additional matters. The intention of OIOS is to transfer the remaining caseload of the Task Force to its Investigations Division at the beginning of 2009 and to ensure the required skill and capacity in the Investigations Division.

[1] These figures are approximate, as in many cases precise calculation is not possible. The amounts cited are not the "loss" to the Organization but the total value of the contracts which have been tainted by corruption or fraud.

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I. Introduction

1. The Procurement Task Force of the Office of Internal Oversight Services (OIOS) was established on 12 January 2006 in response to the perceived problems in procurement identified by the Independent Inquiry Committee into the United Nations Oil-for-Food Programme, the arrest and conviction of a former procurement officer and a procurement audit completed by the Internal Audit Division of OIOS in December 2005, which identified serious deficiencies and malfeasance in United Nations procurement. In addition, the creation of the Task Force supported, and continues to support, the Organization's ambition to address and fight corruption throughout the United Nations.

2. The Task Force operates as part of OIOS and reports directly to the Under-Secretary-General for Internal Oversight Services through its Chairman. The mandate of the Task Force is to investigate all cases involving procurement bidding exercises, procurement staff activities and vendors doing business with the United Nations.

3. In the course of its investigations over the past two and a half years, the Task Force has identified multiple instances of fraud, corruption, waste and mismanagement at United Nations Headquarters and in peacekeeping missions. The Task Force has completed 222 investigations. The aggregate contract value for the cases investigated or under investigation by the Task Force exceeds $2 billion. Since the inception of the Task Force, the aggregate value of the contracts identified as tainted by some form of corruption, fraud or malfeasance exceeds $630 million. More than 60 per cent of the Task Force's cases concerned procurement in various United Nations peacekeeping missions, while approximately 40 per cent addressed procurement-related matters at United Nations Headquarters and other offices.

II. Summary of activities

A. Caseload

4. In the reporting period, the Task Force received 64 procurement-related cases. This caseload supplements the 373 cases referred to the Task Force in the first 18 months of its work (which includes the inventory of procurement-related cases in the Investigations Division of OIOS from 2000 through 2007, transferred to the Task Force), which continue to be addressed. Additional matters continue to be identified on the basis of further reviews of procurement operations and allegations lodged by staff, managers and vendors. The Task Force has also been requested to assist the Investigations Division in a number of additional matters.

5. The Task Force's investigations have focused primarily on significant subjects (vendors, contracts and individuals). As the Board of Auditors confirmed during its review, approximately 60 per cent of all companies investigated by the Task Force since its inception are domiciled in North America and Europe.

B. Human resources

6. The Task Force currently retains 19 investigators representing a variety of professional backgrounds and relevant experiences, and 13 nationalities. It is a diverse group, which is especially significant in light of the fact that only short-term, temporary contracts are able to be offered and the sole duty station is New York. Significant efforts have been made to recruit exceptionally qualified candidates from diverse backgrounds and geographic locales.

C. Future and expiration of the Task Force

7. It is expected that the Task Force will issue at least eight more substantial reports of investigation before the end of 2008, covering a number of fraud and corruption matters with significant contract amounts, including reports involving procurement in the Economic Commission for Africa, the United Nations Office for Project Services (UNOPS) in Afghanistan, and the United Nations Office at Geneva, and additional reports concerning the large peacekeeping missions. OIOS was requested by certain funds and agencies to investigate and, in one case, re-investigate particularly important and pressing procurement-related matters which were referred to the Task Force.

8. While the Task Force has worked and will continue to work zealously to conclude as many cases as possible by the end of 2008, it is quite evident that more than 150 cases are likely to remain to be addressed, including more than 50 cases in which there are allegations of some form of fraud or corruption. Further, the Task Force will not be able to reach all of the overseas offices and peacekeeping missions in which cases and allegations are present, or where there is a need to carefully examine the procurement function based upon numerous allegations made from a variety of sources.

9. As it is expected that cases will continue to be referred, there certainly will be a need to address these additional matters. The intention of OIOS is to transfer the remaining caseload of the Task Force to its Investigations Division at the beginning of 2009, and ensure the required skill and capacity in the Investigations Division.

III. Due process

10. In accordance with its terms of reference, the Task Force operates under the OIOS Manual of Investigation Practices and Policies, dated 4 April 2005. The Manual contains provisions on due process afforded to United Nations staff members during fact-finding investigations. Upon the appointment of the current Chairman in April 2007, the Task Force adopted supplementary policies to provide additional procedural protections to staff members beyond those stipulated in the Manual, as set forth below, based upon its own review of the judgements of the United Nations Administrative Tribunal.

A. Due process under the Manual

11. The Manual defines the process to which a staff member is entitled during the fact-finding investigations phase as "fairness" and specifies that the fairness requirements are met if a staff member, prior to the issuance of a report, is (a) made aware of the scope of the possible misconduct, including any possible new instances of misconduct which arose during the investigation; (b) given the opportunity to explain why his or her actions were proper; and (c) given the opportunity to respond to the allegations, including presenting evidence, explanations, information or witnesses.

B. Additional protections afforded by the Task Force

12. In addition to these requirements, the Task Force, on its own initiative, has supplemented its procedures by affording a number of additional protections to staff members, beyond those which are required by the OIOS Manual, in order to ensure absolute consistency with the jurisprudence of the United Nations Administrative Tribunal. Specifically, the Task Force implemented the following additional protections and procedures in April 2007:

(a) Staff members are invited to review and sign their records of conversations, and are entitled to propose amendments, edits and supplementary information to these documents; staff members are also afforded an unlimited opportunity to review these written documents. The same policy applies to the employees of United Nations vendors, although at the discretion of the Task Force (as reflected in the terms of reference for the Task Force);

(b) The subjects of an investigation are allowed to review certain evidence used by the Task Force in its investigation prior to the issuance of a final report;

(c) The subjects of an investigation are provided with notice of proposed finding letters prior to the issuance of a formal report. These letters include a detailed summary of the allegations, as well as the evidence and information identified by the Task Force which may support the allegations;

(d) As explained in the OIOS Manual — and as the Office of Legal Affairs has confirmed to OIOS — the current United Nations policies and procedures do not provide for the right to counsel in fact-finding investigations (i.e., investigations undertaken prior to formal charges of misconduct). However, under the current Task Force's policy, the subjects of an investigation are afforded the privilege to be accompanied at the interview by another acceptable individual at the discretion of the Task Force.

13. It should be noted that the scope of due process protections afforded to investigation subjects and witnesses by the Task Force exceed the practice of most other administrative investigative bodies.

C. Challenges

14. It has been a common feature of fact-finding investigations in the Organization that staff members have asserted — sometimes as a means to defend themselves against investigations — that their due process rights have been violated. Certain of

these challenges also have arisen as a result of misunderstandings of how due process rights apply in the context of administrative fact-finding investigations. It is also evident that misstatements concerning the scope and applicability of due process rights have been made in front of the Joint Disciplinary Committees and that these misunderstandings, in turn, have had a detrimental impact not only on investigations, but also on the effective administration of justice throughout the Organization. In one particular case, for example, a Joint Disciplinary Committee concluded that the Task Force had not afforded counsel to a staff member and the lack of counsel at the interview constituted a deprivation of the staff member's due process rights. Notwithstanding the fact that the staff member had never requested counsel, that no right to counsel in fact-finding investigations exists, and that the conclusion was factually incorrect, it was used to support sweeping allegations of due process violations by OIOS.

15. The right to counsel has been frequently raised in investigations. The Task Force has been advised formally by the Office of Legal Affairs that with regard to due process protections in its investigations, fairness does not entail the right of a staff member to have counsel's assistance during an interview during the investigations phase of any case. This position is supported by the OIOS Manual.

IV. Defining misconduct

16. OIOS maintains that certain types of severe performance failures constitute misconduct, and it is well within the discretion of the Secretary-General to make such a determination. OIOS has addressed this issue in substantial detail in a number of memorandums to the Office of Legal Affairs and the Administrative Law Unit of the Office of Human Resources Management. The position of OIOS is based on the analysis carried out by the Task Force of the jurisprudence of the Administrative Tribunal and the practice of the Secretary-General in disciplinary matters. It is axiomatic from a reading of the seminal cases in the Administrative Tribunal jurisprudence — including Judgement No. 1083, *Chinsman* (2002) and Judgement No. 1103, *Dilleyta* (2003) — that if a performance failure arises from conduct exceeding that of "innate in capacity or inefficiency", and particularly if it showed reckless indifference to the consequences of one's conduct, it is within the Secretary-General's discretion to find that such performance failure constitutes misconduct. As stated in *Chinsman*, *Dilleyta* and a number of other Administrative Tribunal judgements, a finding of financial loss, criminal conduct or even wrongful intent has not been a necessary requirement prior to a charge of misconduct.

17. In its recent audit of the Task Force, the Board of Auditors suggested that investigators should not review matters of mismanagement, and that any investigative capacity be used sparingly in this regard. This proposal is contrary to established jurisprudence in the United Nations and does not take into consideration that many investigations ultimately resulting in findings of mismanagement do not begin as such. Investigations of such matters are often initiated based upon an allegation of fraud or corruption. Allegations of mismanagement only are given lower investigative priority. However, the consequences of severe mismanagement, especially by senior officials, should not be minimized; not only does such conduct have direct negative effects, but it also causes other staff members, stakeholders, Member States and the public to lose confidence in management and, in turn, the Organization.

V. Investigative and reporting procedures

18. The Task Force's investigative efforts are designed to ensure accuracy to the greatest extent possible through comprehensive investigative procedures and an exhaustive verification and quality assurance process. All relevant complaints and cases within the Task Force's jurisdiction and authority are registered in the Task Force's case management system. In setting priorities, the Task Force considers various factors, including possible criminality and corruption, financial impact, and damage to the reputation of the United Nations. The complaint is carefully analysed, and investigators identify and collect relevant documents and evidence.

19. The Task Force's cases rely on evidence gathered from a variety of sources, both internal (United Nations documents and staff members) and external (outside vendors, former staff members, etc.), and are built upon the theory of corroboration (i.e., that to become findings, allegations must be verified and supported by independent and reliable evidence). Significantly, all relevant evidence is examined, including exculpatory evidence.

20. Prior to the completion of the investigation, the Task Force will interview the potential investigation subjects. During the interview, the Task Force will address the allegations that have been made and present any material and relevant evidence, especially that which may be potentially adverse to the staff member, to the subject for his or her comment. (It should be stressed that simply because an allegation is made against a staff member, the staff member is not automatically a "subject" of the investigation.) Following the interview, the investigators will prepare a note detailing the interview, termed a record of conversation. The staff member will be invited to review, propose edits and sign the record of conversation. The staff member's proposed edits and comments are incorporated into the record of conversation and all written comments by the subject are appended to the interview note.

21. If, after a thorough review, and after taking into account the staff member's position on the matter and the evidence collected during the investigation, the Task Force investigators — as well as the team leader and the Chairman — are of the view that the totality of the evidence establishes, prima facie, that the allegations constitute a violation of a rule, regulation or administrative issuance of the Organization, the Task Force notifies the staff member of the allegations in writing, through a notice of proposed findings letter, and invites the staff member to comment and respond. It should be noted that this letter is issued well in advance of the issuance of a report, and that it outlines the rules and regulations allegedly breached, as well as providing a full description of the evidence supporting the alleged breaches. In the notice of proposed findings letter, the subject is invited to comment on the proposed findings and encouraged to present evidence to the Task Force for further consideration. In addition, subjects are invited to review the documentation gathered by the investigators which may be used to support the Task Force's findings.

22. After a full consideration and analysis of any evidence and comments put forward by a subject, the Task Force drafts a written report. The Chairman and team leaders in the Task Force are consulted regularly during this process. Prior to issuance, the report, including all factual representations and conclusions, is subjected to a vigorous and independent verification and quality control process. In

the verification process, investigators who have had no direct involvement with the case verify each factual statement set forth in the report against supporting documents, which are compiled in verification binders. In cases where the report results in disciplinary proceedings, all supporting materials are transmitted to the Administrative Law Unit for further consideration. The Task Force has a dedicated report editor whose sole function is to assist in the drafting of the reports to ensure accuracy, proper writing style and format.

23. After the completion of the verification process, a draft of the report is re-reviewed by the Task Force's Chairman and a copy is provided to the Under-Secretary-General for Internal Oversight Services for her review as well. If any substantive changes are suggested, the relevant sections are again verified by Task Force investigators. In each report issued by the Task Force, there has been unanimous agreement by the investigators, verifiers and the Chairman of the Task Force concerning the findings, conclusions and recommendations made in the report. After the review and approval of the final draft, the report undergoes a "clean read" process, which is designed to identify any remaining errors. This process is also accomplished by at least two other investigators or team leaders not associated with the investigation or earlier verification process. After all these steps have been completed (including verification and the clean read process), the report is issued through the Task Force Chairman and provided to the Under-Secretary-General for Internal Oversight Services. At this point, the responsibility of the Task Force and OIOS for the report ends.

24. If an allegation is not substantiated by the evidence identified by investigators, the Task Force may nevertheless issue a written report (following the vigorous drafting and verification process identified above), or it may close the case and notify the relevant department or office of its findings. It is the responsibility of department heads to notify staff of the results of investigations.

25. Thereafter, the Task Force is routinely called upon by the Administrative Law Unit to present comments and replies to submissions of the staff members against whom the Administration contemplates administrative action based on the Task Force's findings. Members of the Task Force also may be called upon to testify in any Joint Disciplinary Committee hearing which results from a charge of misconduct against the staff member, based upon the Task Force report.

VI. Vendor investigations and recommendations

26. In the course of its investigations of United Nations procurement, the Task Force has interacted with, interviewed and investigated a number of companies and agents of companies involved in business with the Organization that are alleged to have engaged in malfeasance. The Task Force has reported on investigations of numerous vendors engaged in or seeking to do business with the Organization. Through its experience, the Task Force has identified several areas where improvements in the United Nations regulatory framework should be made as a matter of urgency.

A. Cooperation of vendors with investigations

27. In 2007 and 2008, significant challenges were posed to Task Force investigations by vendors who refused or failed to provide relevant documents, make witnesses available or otherwise cooperate with reasonable requests — despite the fact that these companies enjoyed the privilege of conducting business with the Organization, often receiving substantial sums of money through contracts for provision of goods or services to the Organization.

28. On the basis of this experience, the Task Force has made repeated recommendations to the Office of Legal Affairs to amend the United Nations General Conditions of Contract. The proposed amendments were for the purpose of protecting the Organization from vendors engaged in malfeasance and seeking to take advantage of the Organization through corrupt or insidious means, and defeating audits and investigations by purposefully failing to produce relevant materials which are held in their exclusive custody and control. In January 2008, the General Conditions of Contract were amended to include a revised cooperation provision requiring all vendors to cooperate with the investigations carried out by the Organization with regard to United Nations-related commercial activities and extending beyond the termination of the contract. However, it remains unclear whether this provision covers subcontractors involved in providing goods and services to the United Nations, as subcontractors are not explicitly covered by the language.

29. OIOS had previously recommended — on the basis of the experience gained by the Task Force — that the United Nations Procurement Manual and vendor registration forms should similarly be updated to reflect the amendment of the General Conditions of Contract and to further strengthen and confirm the requirement of vendor cooperation (A/62/272). In that regard, OIOS notes that the Procurement Division has accomplished this in the reporting period by improving the Procurement Manual to include the requirement of vendor cooperation with investigations, as well as a requirement that vendors assert, as a condition of registration, that they — as well as their agents — cooperate with investigations.

B. Proposed amendments to the Procurement Manual and General Conditions of Contract

30. The existing provisions of the Procurement Manual concerning removal and suspension of vendors do not provide sufficient protection of the interest of the Organization, as they lack flexibility in addressing various types of vendor misconduct and various levels of cooperation with OIOS investigations. The Manual also does not sufficiently address the efforts of those vendors who institute ethics compliance and training programmes and otherwise make efforts to strengthen the integrity of their business practices.

31. On 12 June 2008, OIOS — on the basis the experience gained by the Task Force — presented recommendations to the Organization to further amend its Procurement Manual and General Conditions of Contract to provide for a more flexible range of sanctions that can be adapted to encourage greater compliance by vendors and to minimize the risk of loss to the Organization while also addressing the damage caused to the Organization's finances and reputation by fraud and

corruption. Also, these recommendations include provisions to reward cooperating vendors and limit sanctions for those who provide timely, complete and thorough assistance with investigations and make changes to business practices to prevent the recurrence of malfeasance and corruption.

32. The Task Force, drawing upon its own experiences in procurement investigations, also conducted an in-depth examination of comparable international organizations, including the Asian Development Bank and the World Bank, on these issues. One recommendation proposed was the expansion of the range of sanctions beyond that of temporary suspension and permanent removal, so as to include conditional non-debarment, debarment with conditions, financial compensation for any financial losses incurred by the Organization as a result of the vendor's wrongful conduct, and the ability of the Organization to fashion sanctions that take into account a vendor's extraordinary cooperation with an internal investigation. In addition, it was recommended that the General Conditions of Contract should be amended to place more comprehensive contractual obligations on vendors not to participate in corrupt practices and to comply with any sanctions imposed by the Organization. The expanded range of non-financial sanctions would allow the Organization to tailor sanctions to address the relative severity of the misconduct and minimize the loss to the Organization, as well as to reward vendors who have engaged in rehabilitation efforts.

33. Notably, the Task Force has already issued a number of reports recommending sanctions that go beyond the traditional sanctions regime currently employed by the United Nations (i.e., removal and suspension of vendors). For example, in three separate instances the Task Force has recommended reduced suspension periods based on the vendor's significant cooperation with the Task Force, self-imposed rehabilitation efforts and voluntary decision to separate the corrupt officials from the company's employ. The Task Force has also recommended conditional reinstatement for vendors that have agreed both to implement comprehensive ethics and compliance programmes and to abide by the Organization's requirements.

34. By providing for financial sanctions as well, the Organization would be able, in appropriate circumstances, to require that a vendor reimburse the Organization for financial losses, damages and the costs of investigation incurred by the Organization as a result of the vendor's wrongful conduct. (In some cases, vendors have offered, without solicitation, to pay for the costs of investigations.) In particular, by expanding the range of sanctions to include financial sanctions, and by conditioning ongoing vendor registration on an agreement to abide by those sanctions in the event that they are imposed, the Organization would be in a position to seek recovery of financial losses without having to resort to formal arbitral proceedings or external lawsuits, which are costly and time-consuming.

35. The need for the Organization to expeditiously address these issues continues to be of paramount importance as recoveries have yet to be made from vendors or staff who have been determined to have engaged in misconduct, corruption or fraud.

C. Vendor screening process

36. In its earlier report on the Task Force (A/62/272), OIOS recommended improvements in the vendor screening process. OIOS notes that the Procurement Manual and vendor registration documents have been improved to address some of

the concerns expressed by OIOS. However, further efforts are needed. The disclosure by the vendor of the identity of corporate officials, including its principal officers, and former corporate incarnations is critically important to the integrity of the screening, contract selection and sanctions process. Conflict of interest screening is also essential to ensure that the company has no connection with any United Nations staff member. Finally, there continues to be a pressing and continuous need to require the same level of disclosure with regard to the intermediary agent or subcontractor of the vendor and their agreements with the vendor as applies to the vendor itself. It should be made clear to vendors upon registration with the Organization, and at contract selection, that the acts and declarations of any agent should and will be deemed to be those of the principal. As has been repeatedly stressed by OIOS, on the basis of the experience of the Task Force, contracts have been assigned by winning bidders to subcontractors or assignees who did not participate in the bidding process.

D. Removal and suspension of vendors and dissemination of information

37. In its previous report on the Task Force, OIOS stressed the conspicuous need for improved information-sharing between different agencies, departments, funds, programmes, offices and missions of the United Nations, as well as a more robust response by all of these entities to vendor malfeasance when it is identified. While improvements have certainly been made by the Department of Management and the Procurement Division, and OIOS lauds their increased initiatives, the concern about information-sharing between the Secretariat and the funds and programmes still exists. When a vendor is sanctioned by the United Nations, it is essential that such a finding be disseminated to all concerned parties within the Organization and associated institutions, including the funds and programmes, and that appropriate action be taken. For sanctions to be meaningful, and indeed for the benefit of the overall reputation of the Organization, sanctions imposed by one organ of the United Nations should be honoured by all. There was a circumstance earlier in 2008 where a vendor was suspended by the Secretariat, only to gain a contract with one of the funds and programmes shortly thereafter.

38. Furthermore, as OIOS has previously recommended, the need continues to exist for the Organization to implement a vendor sanctions system which entitles the Organization — after due process is duly served — to publicly disclose its decisions on vendor sanctions. This would be beneficial in the fight against procurement fraud and corruption within the United Nations system and analogous institutions.

E. Sanctions of company officials, agents and intermediaries engaged in misconduct

39. The Task Force has noted instances in which principals of debarred companies simply reconstitute themselves in the form of a different corporate identity, through which they again seek to gain business from the Organization, and are able to do so on account of the fact that under the sanctions regime the Organization has in the past not removed individuals, but only companies, from the vendor roster. Under this system, individuals who are the main perpetrators of fraudulent and corrupt

schemes have been able to simply reconstitute themselves under a separate corporate identity. Indeed, in more than a handful of investigations, this circumstance has materialized, in that the individuals who were principally responsible for directing the misconduct were not debarred on an individual basis and later formed a different corporate entity to gain further United Nations business. For this reason, OIOS, through the Task Force, has repeatedly recommended that the current sanctions list include individual names as well as vendors. The Procurement Division is currently implementing an individual watch list.

F. Sanctions list for companies and individuals not registered as United Nations vendors

40. Under the existing sanctions regime, the Organization can only sanction companies registered as United Nations vendors at the time the misconduct is identified. However, in many cases the Task Force identified misconduct by companies (and company officials) not registered as active United Nations vendors. Consequently, the Secretariat was unable to institute removal or suspension proceedings, thereby allowing for the possibility of those companies registering as active United Nations vendors at a later point. Such situations could be addressed by creating a sanctions list which would include companies and individuals identified as having engaged in misconduct affecting the Organization but not registered as United Nations vendors at the time of the misconduct. The Task Force has discussed this proposal with the Procurement Division and it is being implemented.

G. Continued cooperation with the Procurement Division and its Vendor Review Committee

41. Throughout the reporting period, the Task Force has continued providing advice and assistance to the Vendor Review Committee of the Procurement Division. Specifically, the Task Force assisted the Vendor Review Committee in its review of the companies identified by the Independent Inquiry Committee into the United Nations Oil-for-Food Programme (the Volcker Committee) as having made payments to the former Government of Iraq in violation of United Nations sanctions, and conducted a number of other investigations at the request of the Vendor Review Committee and the Controller. The Task Force also assisted the Vendor Review Committee in its screening and evaluation of vendors and individuals seeking to do business with the United Nations.

VII. Implementation of the recommendations of the Task Force, referrals for prosecution and recovery actions

A. Recommendations

42. In the reporting period, the Task Force issued 68 recommendations, of which 25 were addressed to the Department of Management, 14 to the Office of Legal Affairs and 13 to the Department of Peacekeeping Operations. Of the recommendations issued in the reporting period, 21 have been implemented, 12 are in progress, 34 remain unaddressed and 1 was withdrawn. The 34 recommendations

that remain unaddressed include some matters which involve referrals of cases to national authorities and consideration of legal action to be taken by the Organization with regard to the recovery of funds.

B. Referrals to national authorities

43. Since criminal prosecution is outside the jurisdiction of OIOS, the client office, OLA, must work with the local authorities to refer a case and determine the appropriate measures of prosecution, restitution and recovery of damages. Despite the official status of OIOS recommendations, as noted above, a number of these recommendations have not been implemented expeditiously. This is a significant concern for OIOS, as failure to act promptly could inhibit any prospect for recovery of damages and prosecutions in cases where such action is appropriate.

C. Recovery actions

44. Since its inception, the Task Force has issued numerous recommendations concerning recovery of funds.

45. In certain instances, the identification of an exact amount of actual out-of-pocket losses to the Organization requires additional analysis by qualified experts. Any such analysis should include sums not only converted to others, but also those sums used for purposes not originally intended through management errors and misappropriations. In the civil law context, some courts typically assess damages in corruption cases not on the basis of the actual and direct loss figure, but rather on the basis of the entire value of the contract at issue, as a policy determination has been made that the intangible value of the integrity of the public institution and its processes has been vitiated. Indeed, under many statutes, and under many court decisions, it has been determined that actual monetary "loss" is not the appropriate measure of harm in a corruption case involving a public institution for these reasons. Further, it is well settled that corruption ultimately leads to losses even if not immediately identified, as prices of contracts tainted by corruption are typically inflated to account for the percentage paid to secure the contract, and perpetrators make up for reduced bids through other means including subsequent charges and amendments to the contract, as well as other acts. Further, certainly a vendor who has achieved a contract through corrupt means is unjustly enriched by virtue of the benefit of the contract itself.

46. Against this background it is a matter of concern that the Task Force's recommendations for recovery actions — supported by documentary evidence of fraud, corruption and misappropriation of funds resulting in losses and damages — have not been vigorously pursued.

47. The Task Force is aware of only two examples when recovery of funds has been actively pursued by the Organization, namely, the cases of two former United Nations procurement officers. Both matters arose out of recommendations by the Task Force and efforts to demonstrate that the United Nations could be recognized as a victim of the offences committed. In both of these cases, the Task Force repeatedly asserted that the United Nations should be recognized as a victim in the criminal proceedings in which these individuals were charged. After the Office of Legal Affairs referred the matter to outside legal counsel, the law firm examined the

issue and agreed with the Task Force's position, providing a legal opinion that the United Nations may well have a valid argument that it should be recognized as a victim of the offences in these two cases. As such, the firm has advanced arguments on behalf of the Organization to recover funds. The Task Force has assisted the Office of Legal Affairs and the outside legal counsel in their efforts in both cases. The recovery proceedings in both cases are ongoing.

48. With regard to the matters concerning one official, the Task Force identified that the official materially benefited from his corrupt conduct. Based on the Task Force's findings, the Organization has made a claim for restitution in the case for a total amount of over $4.6 million.

49. In all actions where there is loss, the Organization needs to consider and vigorously pursue recovery actions when adverse findings reveal the Organization to have been the victim of fraud or corruption by either a staff member or one of its contractors.

VIII. Major investigations: results and recommendations

A. Final report on a concerned United Nations staff member and UNOPS procurement

50. In an investigation at the United Nations Office for Project Services (UNOPS) (PTF-R012/07), the Task Force uncovered a scheme to defraud UNOPS and the United Nations. The scheme aimed at achieving contracts with an aggregate value exceeding $350,000 and lasted for over one year and involved the staff member, the spouse and companies associated with the spouse. The scheme was accomplished through the submission of purportedly independent bids from companies which appeared to be legitimate competitors, but, in fact, were colluding with one another and were entities associated with the staff member and the staff member's spouse. UNOPS executive management and counsel agreed with the findings and dismissed two staff members after they were afforded the opportunity to review the Task Force's report and respond thoroughly to the allegations. In addition, 12 companies participating in the scheme were removed from the list of registered vendors.

B. Report on a United Nations vendor

51. In its report on a United Nations vendor, dated 24 December 2007 (PTF-R013/07), the Task Force addressed a scheme in which several company officials attempted to secure a valuable United Nations contract under the Iraq oil-for-food programme in exchange for promises of sums of money to be paid to a former United Nations procurement officer and his close associate, a vendor intermediary and agent. As part of the scheme, the vendor obtained confidential United Nations documents and information concerning a valuable procurement exercise for a humanitarian goods inspection contract. In spite of the scheme, the company's efforts to obtain the contract were unsuccessful as the contract was awarded to another vendor. The procurement official has since resigned from the Organization and has been prosecuted criminally in connection with other corrupt conduct undertaken while serving as a United Nations staff member. The Task Force's investigation further established that several officials of the vendor provided, and

caused to be provided, false information to investigators in connection with the Security Council-sanctioned Independent Inquiry Committee into the United Nations Oil-for-Food Programme in November 2004. The Task Force recommended, inter alia, that the Organization take appropriate action against the vendor and its affiliates, taking into consideration the company's extensive cooperation with the investigation, its acknowledgement of wrongdoing and its agreement to implement significant safeguard and oversight measures, including ethics, anti-corruption and compliance training for all employees. The Task Force's recommendations were implemented by the Organization.

C. Report on a United Nations vendor, two former United Nations staff members and the review of the pay and benefits system mandated by the General Assembly

52. On 11 March 2008, the Task Force issued a 169-page report on a General Assembly-mandated project to review the pay and benefits system in the Organization and the scheme by United Nations staff members and vendors to improperly benefit from it (PTF-R014/08). The investigation revealed the scheme by two United Nations staff members to steer valuable contracts under the project to private entities with which they were associated, both during and after their employment with the Organization. In addition, the staff members used the United Nations project to gain business, in an individual capacity, from another international institution. The report further detailed that the staff members in question made false statements and material omissions to the United Nations in furtherance of their scheme, as well as improperly disclosed confidential documents and information to persons external to the Organization. The report concluded that the scheme compromised the integrity of the procurement process and that the participants engaged in personal business while employed by the Organization and billed expenses to the Organization that they should have borne personally. Further, the participants in the scheme attempted to obstruct the investigation by deleting software from United Nations computers in an attempt to erase relevant documents and files. Those efforts resulted in violations of procurement, financial and staff rules. The Task Force recommended, inter alia, that the Organization remove entities and individuals involved in the scheme from the list of registered vendors, as well as take appropriate action against the staff members in question. The Task Force's recommendations are being implemented by the Organization. The vendor is providing consulting services to other entities in the Organization, which are in the process of reviewing whether to extend the sanctions imposed by the Secretariat's Procurement Division.

D. Report on certain staff members of the Department of Social and Economic Affairs and the financial management of the United Nations Thessaloniki Centre

53. On 13 May 2008 the Task Force issued its report on certain staff members of the Department of Social and Economic Affairs and the financial management of the United Nations Thessaloniki Centre for Public Service Professionalism (PTF-R001/08). The report addressed misuse and deficiencies in the hiring of consultants for the Centre, the systematic failure of staff members in supervisory roles to ensure

that proper recruitment procedures were followed in connection to the engagement of consultants, a lack of care of the execution and management of trust fund monies in some instances, and the attempted misappropriation of funds. Those failings resulted in a risk of loss of funds entrusted to the Organization by one of the Member States under the budget of the Centre's trust fund. The Task Force recommended, inter alia, that the Department of Management consider whether disciplinary sanctions should be pursued against the staff members, and that the staff members and the Department make restitution to the trust fund for any losses. Three staff members have been charged with misconduct by the Office of Human Resources Management.

E. Report on electrical maintenance and travel services contracts at the United Nations Office at Nairobi

54. On 6 June 2008 the Task Force issued its report on electrical maintenance and travel services contracts at the United Nations Office at Nairobi (PTF-R002/08). As part of its investigation discussed in the report, the Task Force examined two separate procurement exercises. The investigation was launched on the basis of allegations of fraud and favouritism. The Task Force's investigation did not identify any evidence substantiating the allegations. However, in response to the issues identified during the investigation, the Task Force recommended, inter alia, that the Organization review the role of the responsible officials in the office, including the Executive Services Management Board — a body created to serve as a policy oversight entity — in connection with their respective roles in the procurement of goods and services to ensure consistency with the Procurement Manual and the overarching rules and regulations of the Organization.

F. Report on the procurement of aircraft for MONUC and two United Nations staff members

55. On 6 June 2008, the Task Force issued its final report on two United Nations staff members and the United Nations Organization Mission in the Democratic Republic of the Congo (PTF-R003/08). The report focused on a scheme to steer valuable United Nations contracts in connection with the Mission to a preferred vendor. As part and in furtherance of the scheme, two staff members provided the vendor with confidential United Nations documents and information. Although the Task Force did not find that the Organization suffered any monetary loss as a result of this scheme, it suffered damages as a result of the intentional effort to corrupt the procurement process of an international public institution, possibly cognizable in courts in certain jurisdictions. In such cases, damages may be recoverable irrespective of the proof of any monetary loss. It was recommended that appropriate action be taken against the two United Nations staff members involved in this scheme, and that sanctions be imposed against the vendor and the officials involved. The matter remains under review by the Department of Peacekeeping Operations and the Office of Human Resources Management.

G. Report on a United Nations staff member and related matters

56. On 20 June 2008, the Task Force issued its report on a United Nations staff member and related matters (PTF-R004/08). The report addressed several separate allegations of bribery and favouritism with regard to several procurement exercises at the United Nations Office at Nairobi. The Task Force's investigation did not identify any evidence substantiating the allegations against the staff member concerned and recommended that the staff member be cleared of the allegations.

IX. Efficacy of the anti-corruption initiative

57. The success of any anti-corruption initiative is equally dependent on the energetic and committed participation of all relevant offices in the Organization, and a functioning and effective system of administration of internal justice. Meaningful and effective partnerships must continue to be developed throughout the Organization with the committed participation of the Department of Management (including the Procurement Division and the Vendor Review Committee), the Office of Human Resources Management and the Office of Legal Affairs to pursue recoveries and sanctions and address misconduct. To this end, department heads and programme managers must take steps to seriously address issues of severe mismanagement. This combined effort also must operate within, and as a part of, a well-functioning system of internal justice which protects and promotes staff members' rights and enforces their obligations. The role of the Task Force and OIOS is just one component in this system and in the furtherance of this effort. Without the participation of all of these bodies, any initiative to promote ethical and sound business practices and to address and deter misconduct in contracting will certainly be minimal and ineffective, and continue to expose the Organization to tremendous risk.

(*Signed*) Inga-Britt **Ahlenius**
Under-Secretary-General for Internal Oversight Services

Annex

List of final reports completed during the reporting period

Serial No.	*Report reference No.*	*Date issued*	*Report title*
1	PTF-R012/07	15 August 2007	Final report on a concerned United Nations staff member and UNOPS procurement
2	PTF-R013/07	24 December 2007	Report on a United Nations vendor
3	PTF-R014/08	11 March 2008	Report on a United Nations vendor, two former United Nations staff members, and the General Assembly-mandated review of the pay and benefits system
4	PTF-R001/08	13 May 2008	Report on certain staff members of the United Nations Department of Social and Economic Affairs and the financial management of the United Nations Thessaloniki Centre
5	PTF-R002/08	6 June 2008	Report on electrical maintenance and travel services contracts at the United Nations Office at Nairobi
6	PTF-R003/08	6 June 2008	Report on the procurement of aircraft for MONUC and two United Nations staff members
7	PTF-R004/08	20 June 2008	Report on a United Nations staff member and related matters

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Report on the activities of the Office of Internal Oversight Services

Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008

Note by the Secretary-General

The Secretary-General has the honour to transmit for the consideration of the General Assembly his comments on the report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008 (A/63/329).

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Summary

The report of the Office of Internal Oversight Services (OIOS) on the activities of the Procurement Task Force for the 13-month period ended 31 July 2008 summarizes the activities of the Task Force during that period. The present note provides comments and clarifications on the information contained in the report for the consideration of the General Assembly.

The Secretary-General stresses that, as many of the cases summarized in the OIOS report remain under consideration, the findings of the Procurement Task Force should be regarded as those of the Task Force, and not a final determination by the Organization.

I. Introduction

1. The present note gives additional information to provide a fuller picture for the General Assembly during its consideration of the report of the Office of Internal Oversight Services (OIOS) on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008.

II. General comments on the report

2. At the outset, the Secretary-General would like to emphasize that the amounts referred to in the summary and in paragraph 3 of the report do not reflect financial losses to the Organization. Rather, the amounts represent the total contract value which has, in the view of OIOS, been tainted by corruption or fraud.

3. In its report, OIOS has included information on the findings of its investigations during the reporting period. While OIOS may have completed its investigations and finalized the related report, the final determination of whether any rules have in fact been breached is made by the Secretary-General and his programme managers, followed by internal justice proceedings where applicable. Most of the Task Force's reports summarized in the OIOS report remain under review by the Administration. That being the case, the Secretary-General reiterates that the findings of the Task Force should be regarded as those of the Task Force, and not a final determination by the Organization. Each of the staff members concerned is presumed innocent pending the conclusion of his or her case.

4. Below are specific comments set out by reference to the relevant sections of the OIOS report.

III. Comments on due process (section III)

5. The Secretary-General refers to the detailed information contained in paragraph 13 of his report on implementation of the recommendations contained in the report of the Board of Auditors on the activities of the Task Force (A/63/167/Add.1), with regard to recommendation of the Board of Auditors that the Administration standardize and consolidate the rules and procedures applicable to all investigations in the United Nations under an instruction of the Secretary-General, and that such instruction be systematically given to staff interviewed. The Secretary-General considers that implementation of this recommendation will provide additional clarity of due process rights in the context of investigations whether undertaken by the Task Force or the Investigations Division of OIOS, programme managers or any of the other entities entrusted to carry out administrative fact-finding investigations.

IV. Comments on defining misconduct (section IV)

6. At the outset, the Secretary-General emphasizes that decisions relating to whether a particular action constitutes misconduct rest with him and are taken after consideration of the totality of the facts and in consultation with all concerned units of the Organization. While OIOS may make findings and recommendations

regarding actions to be initiated pursuant to its investigations, the decision on what action should be taken rests with the Secretary-General and the provision of legal advice to the Secretary-General and to other organs under the Charter of the United Nations on the propriety of any action falls within the competence of the Legal Counsel. Further, conduct which appears to be in violation of applicable United Nations regulations or rules, but does not give rise to potential breaches of national law and may be subject to criminal prosecution (for example disciplinary issues such as misconduct), falls primarily within the purview of the Office of Human Resources Management.

7. The first sentence of paragraph 16 of the OIOS report states: "OIOS maintains that certain types of severe performance failures constitute misconduct, and it is well within the discretion of the Secretary-General to make such a determination". The Secretary-General concurs that severe performance failures may rise to the level of misconduct and reiterates that the institution of disciplinary action in such cases falls within his discretion. As is inherent in the exercise of any discretion, each case must be considered on its facts and, as such, an OIOS recommendation or finding of severe performance failings does not necessarily constitute misconduct or bind the discretion of the Secretary-General.

V. Comments on the Task Force's investigative and reporting procedures (section V)

8. The Secretary-General has no comments.

VI. Comments on vendor investigations and recommendations (section VI)

9. The Secretary-General takes note of the issues raised by the Task Force regarding vendors, their agents and intermediaries who refuse to cooperate with investigations in some instances. The Organization has introduced robust measures to facilitate cooperation by vendors with the investigations of the Task Force and with any other oversight body of the United Nations. These measures include:

(a) The introduction of new registration criteria to be applied to potential United Nations vendors, including a declaration that the potential vendor's subsidiaries, agents, intermediaries and principals agree to cooperate with OIOS during any investigative services undertaken by it, either before, during or after the execution of a contract. Such cooperation includes the provision of all requested documents, records and financial information, as well as access to employees, officers and staff;

(b) The adoption of the new United Nations General Conditions for Contract as revised in January 2008, which confer upon the United Nations the right to conduct an investigation of the vendor's operations in regard to any aspect of the award, and to impose a corresponding duty upon the vendor to cooperate with such an investigation, pursuant to paragraph 24.2 of the revised General Conditions of Contract. The vendor is obligated to provide full and timely cooperation with any such inspections, post-payment audits or investigations. It is significant to note that the duty to cooperate with an investigation of the United Nations does not lapse

upon expiration or prior termination of the contract. Moreover, the vendor is required to obligate its agents, including but not limited to the vendor's attorneys, accountants or other advisers, to reasonably cooperate with any pertinent inspections, post-payment audits or investigations carried out by the United Nations;

(c) The application of the United Nations Supplier Code of Conduct. This Code of Conduct contains provisions which confer upon the United Nations the right to conduct investigations. The Code expressly states that the United Nations General Conditions of Contract are an essential part of United Nations contracts and are therefore legally enforceable against United Nations vendors. The obligation to cooperate with inspections, post-payment audits or investigations carried out by the United Nations with reference to any aspect of a United Nations contract pursuant to the General Conditions of Contract, is therefore strengthened by the provisions of the Supplier Code of Conduct.

10. Specifically, with respect to the OIOS recommendation concerning the cooperation of vendors with investigations, the Secretary-General notes that the last sentence of paragraph 28 of the OIOS report states that it is unclear whether the cooperation provision included in the General Conditions of Contract applies also to subcontractors. The Secretary-General wishes to clarify that subcontractors are not a party to a contract entered into between the United Nations and a vendor. Thus, unless the terms of the relevant contracts specify that the subcontractor agrees to be bound by all of the terms and conditions of the contract between the vendor and the United Nations, including the cooperation provision of the General Conditions of Contract, such contract terms would not necessarily be applicable to subcontractors. Nevertheless, the Secretary-General notes that, pursuant to the relevant provisions of the General Conditions of Contract, the United Nations has the right to approve assignments by the vendor and to approve any subcontractors. The Secretary-General also notes that pursuant to the General Conditions of Contract, the terms of any subcontract entered into between a vendor and a subcontractor must be subject to, and must be construed in a manner that is fully in accordance with, all of the terms and conditions of the main contract.

11. The Secretary-General wishes to clarify that the Procurement Manual offers detailed guidelines governing the removal and suspension of vendors. The Vendor Review Committee deliberates individual cases and recommends the removal or suspension of vendors deemed to have violated contractual provisions. In addition to removing and suspending defaulting vendors from the United Nations vendor roster, the Procurement Division continues to provide notice of vendor removal and suspension to peacekeeping missions, offices away from Headquarters, tribunals, commissions, political missions, agencies, funds and programmes throughout the United Nations system, as well as the Global Compact Office. Moreover, information regarding suspended or removed vendors is available on the Procurement Division's public website. The General Assembly may wish to note that one of the objectives of the Procurement Network of the High-level Committee on Management is the establishment of a global information-sharing network among members in relation to vendors' conduct.

12. Finally, as a general comment, the Secretary-General notes that the OIOS recommendations aim at significantly expanding the range and scope of the Organization's current sanctions regime against vendors who engage in malfeasance. Such recommendations include, for example, (a) the expansion of the

range of sanctions beyond the existing ones of temporary suspension and permanent removal of vendors from the vendors' roster to include, inter alia, sanctions of a financial nature (paragraphs 32 to 34 of the OIOS report); (b) the publication and dissemination of information concerning the Organization's imposition of sanctions on vendors (paragraphs 37 and 38 of the OIOS report); and (c) the imposition of sanctions on company officials and not only on companies, as well as on vendors who are not on the United Nations vendors roster and thus not in any contractual relationship with the Organization (paragraphs 39 and 40 of the OIOS report).

13. The Secretary-General supports the proposals of OIOS for strengthening the Organization's vendor sanctions regime in order to allow the United Nations to have greater flexibility in dealing with vendors who engage in fraud or other malfeasance. The Secretary-General notes that the recommendations set forth in the OIOS report are, for the most part, based on processes and procedures established by certain international financial institutions, including the World Bank and the Asian Development Bank, and that these institutions have set up comprehensive and elaborate quasi-judicial procedures in order to ensure due process for the vendors involved.

14. The Secretary-General agrees that the procedures that have been established by these financial institutions could serve as possible models for the Organization's own undertaking to enhance its sanctions regime. In that regard, it is important to ensure that any new enhanced regime is implemented in a manner that fully protects the interests and legal rights of the Organization, provides the flexibility that OIOS seeks and addresses satisfactorily any complaints by aggrieved vendors subjected to sanctions.

15. To that end, the Secretary-General believes that it is advisable, and indeed necessary, for the Organization to undertake an in-depth review of the procedures that these institutions have in place, and also obtain "lessons learned" information from them. In addition, such review would consider and make recommendations on the legislative framework for establishing the proposed expanded regime.

VII. Comments on implementation of the Task Force's recommendations, referrals for prosecution and recovery actions (section VII)

16. In paragraph 42, the Task Force indicates that 34 of its 68 recommendations issued during the reporting period remain unaddressed. The Secretary-General would like to assure the General Assembly that all reports and recommendations of the Task Force, including the 34 recommendations referenced above, are being actively considered and, where accepted by the Secretary-General, appropriate action is being taken. It should be noted that in the first quarter of 2008, the Management Committee conducted a review of the implementation of all recommendations of the Task Force and will conduct another review by the end of the year. While action on such reports is taken as expeditiously as possible, such matters require careful review and consideration involving all concerned units of the Organization. This careful review and consideration cannot be avoided and must be taken into account.

17. In this regard, OIOS makes particular reference to the implementation of its recommendations for referral to national authorities, as well as legal action with regard to the recovery of funds. During the period covered by the OIOS report, the Organization has taken various actions with respect to referrals of cases and the pursuit of restitution and damages where deemed appropriate and has, in one case, been awarded $932,165.99 in restitution. Actions instituted during the reporting period in another case have given rise to an award totalling $515,285.41.

18. OIOS recommendations for referral to criminal authorities and recommendations to institute legal action, including civil action in national court systems, do not and cannot automatically result in such action. Any such recommendation must first go through a careful evaluation process which encompasses an analysis of policy considerations as well as those of a legal nature, involving all concerned units of the Organization, before any such referral is made. The final decision in all cases of referral rests with the Secretary-General and, once a decision is made to refer, the Office of Legal Affairs promptly implements such referral.

19. Examples of factors which must be taken into consideration prior to instituting legal action include the impact on privileges and immunities; the likelihood of the success of the claim if pursued; the impact upon the reputation of the Organization caused by becoming party to a lawsuit; an evaluation of the expected cost and benefit of entering into such action in view of the high costs and uncertainties of litigation; the exposure of the Organization to financial and other risks; and the potential impact on the internal justice system of the Organization.

20. With regard to OIOS recommendations to institute civil action, in some cases the evidence presented by OIOS in support of its recommendations has not been considered sufficient to bring a successful civil action. In other cases, civil action may not be an option due to contractual limitations or for policy reasons. In cases where OIOS recommendations for civil action are presented in tandem with recommendations for criminal referrals, awaiting the result of the criminal trial and subsequent sentencing before civil proceedings are instituted can be the most effective way to proceed. This is because an award of financial restitution and recovery for the Organization can be the result of criminal proceedings, thereby rendering further action unnecessary and avoiding the high costs of litigation.

21. The Secretary-General further notes that OIOS recommendations for financial recovery actions require full consideration as to the legal feasibility or likelihood of success of such actions. The discussion in paragraph 45 of the OIOS report regarding civil law does not take into account the diversity of, and differences in, the civil and criminal legislative frameworks of the many jurisdictions in which the Organization operates. This diversity leads to a high degree of uncertainty regarding the potential success of civil recovery actions without further detailed and jurisdictionally specific research which requires sufficient time and resources to execute. This must be balanced against the overall benefit of entering into such action given the high costs and uncertainty of litigation.

22. With regard to OIOS recommendations for financial recovery to be taken against staff members, the Secretary-General would reiterate that such recommendations do not automatically result in the recommended action being taken. All recommendations are carefully considered by the Administration, and the final decision to pursue, or not to pursue, an action for financial recovery is the

result of various legal and policy considerations involving all concerned units of the Organization, including consultation with, and input from, OIOS.

23. For those recommendations made by OIOS for financial recovery under the Organization's internal justice procedures, the Administration is bound to evaluate and conduct each case in accordance with the policy of the Organization, as set out in the administrative instruction on financial responsibility of staff members for gross negligence (ST/AI/2004/3), and the procedures contained therein. The Secretary-General notes that this policy is limited to the recovery of any financial loss suffered by the United Nations as a result of a staff member's gross negligence or violation of the Organization's regulations, rules or administrative instructions. The Administration has indicated to OIOS that in order for allegations of gross negligence or misconduct resulting in financial loss to be pursued, the policy requires that a computation of the loss which the Organization proposes to recover be prepared, together with an explanation of the basis on which the computation was made.

24. In cases where OIOS does not provide a computation in its reports that may be used to initiate the recovery action recommended under ST/AI/2004/3, the Administration requests this computation from OIOS. Pending receipt of the computation, the staff member concerned is charged with misconduct, and the Administration reserves the right to initiate recovery action. Upon receipt of a computation from OIOS and an explanation of the basis upon which it was made, the Administration considers initiating recovery action against the staff member concerned in accordance with the established policy and procedure.

VIII. Comments on major investigations: results and recommendations (section VIII)

25. As most of the cases summarized in the OIOS report remain under active review, the Secretary-General reiterates that the findings of the Task Force reflected in the OIOS report are those of the Task Force and do not represent a final determination by the Organization.